

DIEMER & WEI, LLP
Kathryn S. Diemer, SBN 133977
Susan B. Luce, SBN 120843
55 South Market St., Ste 1420
San Jose, CA 95113
Tel: 408-971-6270
Fax: 408-971-6271

kdiemer@diemerwei.com
sluce@diemerwei.com

Attorneys for Patrice Darisme

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re:

PRINCESCA N. ENE,

Debtor.

Case No. 21-50901

Chapter 11

Honorable M. Elaine Hammond

PATRICE DARISME,

Plaintiff,

vs.

PRINCESCA N. ENE,

Defendant.

Adversary Proceeding No. _____

**COMPLAINT TO DETERMINE DEBTS
TO BE EXCEPTED FROM DISCHARGE
(11 U.S.C. § 523(a)(2); (a)(4); (a)(6)
and (a)(15))**

Plaintiff, Patrice Darisme, brings this Adversary Complaint pursuant to 11 U.S.C. §§ 523(a)(2); 523(a)(4); 523(a)(6) and 523(a)(15) to request a determination by this Court that the debt, found by the Superior Court of California to be owed to Plaintiff by Defendant Princesca N. Ene is excepted from discharge.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523.
2. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157 (B)(2)(i).
3. Venue in the Northern District of California is proper under 28 U.S.C. § 1409(a).
4. Plaintiff consents to entry of a Final Order or Judgment by the United States Bankruptcy Court for the Northern District of California in this Adversary Proceeding.

PARTIES

1. Plaintiff is an individual residing in Santa Clara County, California.
2. Plaintiff is a judgment creditor of Debtor/Defendant Princesca N. Ene and has standing to bring this adversary proceeding.
3. Defendant, Princesca N. Ene, is an individual Debtor under Chapter 11 whose petition was filed in the San Jose Division of the United States Bankruptcy Court for the Northern District of California, thereby commencing Bankruptcy Case No. 21-50901.

GENERAL ALLEGATIONS

4. Princesca N. Ene and Patrice Darisme were married on September 2, 2000. They have been separated since January 1, 2015. (Exhibit 1, Statement of Decision, Page 9, lines 8-11).
5. In 2004, NiTi Tubes, LLC (“NiTi”) was formed, purportedly by Defendant Ene and Wilson Eng. (Exhibit 1, Page 9, lines 14 - 21).
6. In 2012, NiTi incorporated as NiTi Tubes, Inc. The corporation changed its name to Nano Alloys, Inc., dba NiTi Tubes. Defendant Ene held all 700,000 shares. (Exhibit 1, Page 10, lines 7 - 12).

- 1
- 2 7. The 700,000 shares were community property. (Exhibit 1, Page 10, lines 13 - 14).
- 3
- 4 8. After separation, Defendant unilaterally created stock certificates to give Mr. Eng a 50%
- 5 interest in the company. Mr. Eng never saw the stock certificates until his deposition in
- 6 2019. (Exhibit 1, Page 10, line 26 – Page 11, line 8).
- 7
- 8 9. This transfer, in and of itself, has been found to be a breach of Defendant’s fiduciary duty
- 9 to Plaintiff. (Exhibit 1, Page 11, lines 15 - 23).
- 10
- 11 10. At some time, Defendant Ene prepared documents for Nano Alloys, dated late 2014 (just
- 12 before separation), that purported to “cancel” the stock certificates giving her 700,000
- 13 shares, and issued her mother and Mr. Eng 200,000 shares each. She also granted herself
- 14 400,000 shares. (Exhibit 1, Page 11, line 24 – Page 12, line 10).
- 15
- 16 11. Purportedly, in 2017, Defendant’s mother returned her shares, and stock certificates were
- 17 then issued giving Mr. Eng and Defendant each 350,000 shares of Nano Alloys, for no
- 18 apparent consideration. (Exhibit 1, Page 12, lines 11 - 22).
- 19
- 20 12. Plaintiff did not know of and did not consent to these transfers of community property.
- 21 (Exhibit 1, Page 12, line 23 – page 13, line 2).
- 22
- 23 13. The Honorable Roberta S. Hayashi of the Superior Court of California found that the
- 24 transfer to Mr. Eng of 50% of the company was a breach of her fiduciary duty to
- 25 Plaintiff. (Exhibit 1, page 13, lines 3 -7).
- 26
- 27 14. While the Family Court was trying to determine the value of Nano Alloys, Defendant
- 28 attempted to reduce the company’s value by alleging the assets were subject to client
- warranty and claims exceeding \$6,100,000.00. (Exhibit 1, Page 15, lines 1 – 6).

- 1 15. The Family Court found her contentions were not supported by the evidence. Defendant
2 did not testify regarding the specifics of the underlying transactions. (Exhibit 1, Page 15,
3 lines 6 - 17).
- 4 16. At trial, testimony made it clear that there was more than one set of financial records
5 maintained by the company and that return authorizations purportedly issued by the
6 company were patently false. (Exhibit 1, page 15, lines 1 – 17).
- 7 17. Defendant ceased operations of Nano Alloys in early 2018. The accounts receivable
8 were liquidated leaving the primary asset of approximately \$6,000,000.00.
- 9 18. Defendant transferred the approximate \$6,000,000.00 from accounts in the name of Nano
10 Alloys into bank accounts in the names of other fictitious entities such as “NiTitub” or
11 “Cardinal Cordis Health” which were under her control. (Exhibit 1, page 16, lines 9 –
12 13).
- 13 19. In 2017, in an attempt to delay the discovery of the flurry of transfers of Nano assets to
14 accounts under Defendant’s control, she tried to quash the subpoenas for bank records
15 which had been initiated by Plaintiff. (Exhibit 1, page 17, lines 11 – 28).
- 16 20. Defendant also contended that the \$6,000,000.00 in funds had been transferred by
17 agreement between Nano Alloys and *Cordis Corporation*, to establish a reserve fund
18 from which customer liability claims could be satisfied. (Exhibit 1, Page 18, line 1 –
19 Page 19, line 5).
- 20 21. Deposition testimony of Laura Vaughn, authorized agent of *Cardinal Health*, the entity
21 that controls *Cordis Corporation*, showed there was no agreement with Defendant to
22 create “Cardinal Cordis Health” or to open bank accounts in the name of such entity.
23 (Exhibit 1, Page 19, lines 5 - 15).
- 24
25
26
27
28

- 1 22. The Family court found that Plaintiff had proved, with clear and convincing evidence,
2 that Defendant engaged in “malice, oppression and fraud” to reduce the value of Nano
3 Alloys, Inc. Damages of \$1,805,291.50 were awarded to Plaintiff. (Exhibit 1, page 16,
4 lines 1 – 8).
- 5 23. Further, the Family Court found clear and convincing evidence that Defendant misused
6 her position of authority to access and use funds of Nano Alloys, Inc., for her own
7 personal benefit, thereby reducing the community property interest. (Exhibit 1, Page 20,
8 lines 13 – 16).
- 9 24. After separation, Defendant continued to use Plaintiff’s personal AMEX credit card to
10 charge Nano Alloys, Inc.’s business expenses, charging \$24,778,70 in April, 2015 and
11 \$27,316.57 in June, 2015. (Exhibit 1, Page 22, lines 1 – 4).
- 12 25. In April, 2015, Plaintiff and Defendant agreed each would receive \$100,000.00 from an
13 investment account as an advance distribution. (Exhibit 1, Page 22, lines 3 – 6).
- 14 26. Plaintiff used Nano Alloy, Inc.’s funds and transferred \$286,481,99 to himself to pay off
15 the outstanding balance on his AMX credit card created by Defendant’s use of the card,
16 and to distribute \$100,000 to Defendant and \$100,000 to himself. (Exhibit 1, Page 22,
17 lines 7 – 11).
- 18 27. Nonetheless, in September, 2015, Defendant used her position of management and
19 control of Nano Alloys to file a police report accusing Mr. Darisme of stealing over
20 \$200,000.00 of Nano Alloys’ funds, and then directed Nano Alloys to spend over
21 \$120,000 of corporate funds to pursue claims against Plaintiff Darisme for his removal of
22 the funds. (Exhibit 1, Page 22, lines 11 – 17).
- 23 28. Defendant also provided knowingly false information to the accounting professionals.
24 (Exhibit 1, Page 22, lines 18 – 22).
- 25
26
27
28

1 29. In early 2018, Defendant purposefully ceased operations of Nano Alloys, Inc., thereby
2 destroying any business goodwill and reducing the value of the community property
3 interest. (Exhibit 1, page 22, lines 18-22).

4 30. Judgment After Trial was signed by Judge Hayashi on April 28, 2021 and entered on May
5 3, 2021. (Exhibit 2).

6 31. Thereafter, on September 9, 2021, Judge Hayashi signed an Amended Judgment After
7 Trial to correct a math error and to set a hearing date and briefing schedule for the
8 reserved issues – valuation of a Canadian corporation and the valuation and disposition
9 of the household furnishings and fixtures. The Amended Judgment was entered on
10 September 13, 2021. (Exhibit 3).

11
12
13
14 **FIRST CLAIM FOR RELIEF**
15 **U.S.C. § 523(a)(2) – Actual Fraud**

16 32. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 – 31 as
17 though fully set forth herein.

18 33. Pursuant to §523(a)(2)(A), a Debtor will not be discharged for debts obtained by false
19 pretenses, a false representation or actual fraud.

20 34. Actual fraud encompasses the kind of conduct carried on by Defendant, the wrongful,
21 methodical and premeditated transfer of assets by Defendant to hide them from Plaintiff
22 and her creditors.

23 35. Defendant engaged in schemes to impair and impede Plaintiff's ability to locate and
24 realize the value of the community assets.

25 36. In the Judgment After Trial (Exhibit 2), the Court noted, "...Petitioner (Plaintiff) has met
26 his burden of showing by clear and convincing evidence that Respondent (Defendant)
27
28

1 engaged in ‘malice, oppression and fraud’, in order to reduce the value of Nano Alloys,
2 Inc. from its value as an ongoing business (\$9,610,583 as of December 31, 2017 to
3 \$6,000,000, the reported cash in the bank at the commencement of trial.” (Exhibit 2, page
4 10, lines 5 – 10).

5
6 37. As a result the Court awarded damages to Plaintiff of \$1,805,291.50 as the amount by
7 which he was damaged as a result of Defendant’s course of conduct. (Exhibit 2, page 10.
8 Lines 11 – 14).

9 38. The Court also awarded Plaintiff sanctions in the amount of \$107,043. 25 for
10 Defendant’s bad faith and dilatory conduct in connection with the division of the stock of
11 Nano Alloys, Inc. and its valuation. (Exhibit 2, page 10. Lines 15 – 28).

12 39. Plaintiff requests this Court adjudge that Defendant violated Section 523(a)(2)(A) of the
13 Bankruptcy Code and, therefore, Defendant’s indebtedness to Plaintiff constitutes a non-
14 dischargeable debt.
15

16 **SECOND CLAIM FOR RELIEF**
17 **11 U.S.C. § 523(a)(4) – For Fraud or Defalcation**
18 **While Acting in a Fiduciary Capacity**

19 40. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 – 39 as
20 though fully set forth herein.

21 41. Pursuant to California Family Code §721, in transactions between themselves, spouses
22 are subject to the general rules governing fiduciary relationships that control the actions
23 of persons occupying confidential relations with each other. This confidential
24 relationship imposes a duty of the highest good faith and fair dealing on each spouse, and
25 neither shall take any unfair advantage of the other. This confidential relationship is a
26 fiduciary relationship subject to the same rights and duties of nonmarital business
27 partners, as provided in the California Corporations Code.
28

1 42. The Amended Judgment After Trial awarded Plaintiff \$2,402,645.70 under Family Code
2 §1101(g) for damages caused by Defendant's breaches of fiduciary duty in connection
3 with her transfer or purported transfer of 50% of the shares of Nano Alloys, Inc. (Exhibit
4 3, Page 12, lines 1 – 3).

5
6 43. Plaintiff was awarded \$1,805,291.50 under Family Code §1101(h) for damages caused
7 by Defendant's breaches of fiduciary duty in connection with her actions that resulted in
8 the reduction of value of Nano Alloys, Inc. between December 31, 2017 and the date of
9 trial. (Exhibit 3, Page 12, lines 4-7).

10 44. Plaintiff requests this Court adjudge that Defendant violated Section 523(a)(4) of the
11 Bankruptcy Code and, therefore, Defendant's indebtedness to Plaintiff constitutes a non-
12 dischargeable debt.

13
14 **THIRD CLAIM FOR RELIEF**
15 **11 U.S.C. § 523(a)(6) – For Willful and Malicious**
16 **Injury Caused by the Debtor**

17 45. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 – 44 as
18 though fully set forth herein.

19 46. The Family Court found that Plaintiff had met his burden of showing by clear and
20 convincing evidence that the Defendant engaged in "malice, oppression and fraud" in
21 order to reduce the value of Nano Alloys, Inc. from its value as an ongoing business
22 (\$9,610,583 as of December 31, 2017) to \$6,000,000, the reported cash in the bank at the
23 commencement of trial. (Exhibit 3, Page 10, lines 20 – 26).

24 47. The Court then awarded damages in the amount of \$1,805,291.50 and sanctions in the
25 amount of \$107,043.25 for Defendant's bad faith and dilatory conduct. (Exhibit 3, Page
26 11, lines 3 – 12).

1 48. Plaintiff requests this Court adjudge that Defendant violated Section 523(a)(6) of the
2 Bankruptcy Code and, therefore, Defendant's indebtedness to Plaintiff constitutes a non-
3 dischargeable debt.

4 **FOURTH CLAIM FOR RELIEF**
5 **11 U.S.C. § 523(a)(15) – For a Debt Incurred by the Debtor**
6 **in the Course of a Divorce or Separation**

7 49. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 – 48 as
8 though fully set forth herein.

9 50. The debt owed to Plaintiff by Defendant is memorialized by the findings and judgments
10 of the Superior Court of California. (Exhibits 1, 2 and 3).

11 51. The debts owed to Plaintiff, pursuant to the Statement of Decision and the Judgements
12 After Trial, are not support debts.

13 52. The Petition for Dissolution with Minor was initiated by Plaintiff on February 20, 2015,
14 well before Defendant commenced this Chapter 11 proceeding.

15 53. Plaintiff requests this Court find that the debt owing to Plaintiff by Defendant, per the
16 Amended Judgment After Trial, Exhibit 3, constitutes a debt incurred in the course of a
17 dissolution and, as such, is a non-dischargeable debt pursuant to 11 U.S.C. §523(a)(15).
18
19
20

21 **PRAYER**

22 WHEREFORE, Plaintiff respectfully requests that this Court find:

23 The debt owed to Plaintiff by Defendant, memorialized in the Amended Judgment
24 After Trial (Exhibit 3) is non-dischargeable pursuant to 11 U.S.C. §§ 523 (a)(2)(A), 11
25 U.S.C. §§ 523 (a)(4); 11 U.S.C. §§ 523 (a)(6) and/or 11 U.S.C. §§ 523 (a)(15);
26
27
28

1 And for such other relief the Court deems just and proper.
2

3 Respectfully submitted,
4

5 Dated: September 23, 2021

DIEMER & WEI, LLP

6
7 /s/ Susan B. Luce
8 Attorneys for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28